

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NASSAU BAY HOMES ASSOCIATION	§	
v.	§	
	§	CIVIL ACTION NO. 4:19-cv-04693
GREAT AMERICAN ALLIANCE	§	
INSURANCE COMPANY	§	
AND TIMOTHY ALAN MERCER	§	

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THIS COURT:

Great American Alliance Insurance Company (hereinafter "Great American"), Defendant in the above styled and numbered cause, files this, its Notice of Removal, and would show the Court as follows:

1. Great American Alliance Insurance Company has been sued in a civil action styled Cause No. 2019-59534; *Nassau Bay Homes Association v. Great American Alliance Insurance Company and Timothy Alan Mercer*; in the 129th District Court in Harris County, Texas (hereafter referred to as "the state court action"). The original petition in the state court action was filed August 23, 2019. On September 3, 2019, Great American received citation and a copy of the petition. Thereafter, on November 2, 2019, the 129th District Court for Harris County, Texas, dismissed, with prejudice, Timothy Alan Mercer, the non-diverse defendant. *See* Exhibit I. This Notice is filed with thirty (30) days of receipt of the order from which it could first be ascertained that the case is one which has become removable pursuant to 28 U.S.C. §1446(b)(3).

2. Great American files this notice of removal pursuant to the provisions of 28 U.S.C. §1441, *et. seq.*, to remove this action from the District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

3. Plaintiff, in its original petition, alleges that Defendant Great American wrongfully denied or delayed payment for claims for damage to a structure allegedly resulting from a covered cause of loss that is insured by Great American, thereby breaching the policy of insurance issued by Great American to Plaintiff¹. Plaintiff further alleges that Great American's actions in investigating and delaying or denying Plaintiff's claim for insurance benefits constituted a violation of the common law duty of good faith and fair dealing. Plaintiff further alleges that Great American's actions in investigating and delaying or denying Plaintiffs' claim for insurance benefits constituted a violation of the Texas Insurance Code, and the common law duty of good faith and fair dealing. Plaintiff has also sued Timothy Alan Mercer, an adjuster assigned to this claim, for unfair settlement practices; however, although Timothy Alan Mercer filed his answer on October 11, 2019, he was dismissed from the State Court action on November 2, 2019.

4. This Court has original jurisdiction over this civil action under the provisions of 28 U.S.C. §1332. Plaintiff, by nature of its citizenship and of its principal place of business, is a citizen of the state of Texas. Defendant, Great American, is a corporation incorporated in and with its principal place of business in Ohio. A corporation is a citizen of the state where it is incorporated and the state where it has its principal place of business. *See Thompson v. Deutsche Bank Nat'l Tr. Co.*, 775 F.3d 298, 303 (5th Cir. 2014) (citing *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999)). Therefore, for purposes of diversity, Great American is a citizen of Delaware and Ohio.

5. Based on the information contained within Plaintiff's previous demand letter and

¹ Plaintiff is not an insured (named or otherwise) under the policy that forms the basis of this lawsuit. Rather, the policy at issue in this case is a "lender placed" insurance policy that is issued to and exists to protect the interests of Great American's insureds.

plaintiff's original petition filed in State Court, it appears the amount in controversy in this lawsuit is in excess of \$75,000, exclusive of interest and costs.

6. Venue is proper in Houston Division of the Southern District of Texas because the insured property is located in Houston, Harris County, Texas, which is the location where the facts giving rise to this suit took place.

7. In accordance with 28 U.S.C. § 1446 (a), the following are attached hereto:

- Exhibit A: Index of Matters Being Filed;
- Exhibit B: A copy of the Citation as to Great American Alliance Insurance Company;
- Exhibit C: Plaintiff's Original Petition;
- Exhibit D: Defendant Great American Alliance Insurance Company's Original Answer;
- Exhibit E: The state court's Docket Sheet;
- Exhibit F: List of all Parties and Counsel of record;
- Exhibit G: Defendant Great American Alliance Insurance Company's Consent to Removal of Case to Federal Court;
- Exhibit H: Defendant Timothy Alan Mercer's Original Answer; and
- Exhibit I: Certified copy of conformed Order Granting Defendant's Motion to Dismiss Timothy Alan Mercer (signed November 2, 2019).

8. The citation and petition in this action were served on Great American on September 3, 2019 by serving its registered agent: CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201. This notice of removal is filed within 30 days of dismissal of Timothy Alan Mercer and is timely filed under 28 U.S.C. § 1446(b). Furthermore, this notice of removal is being filed within one year of the date this action commenced.

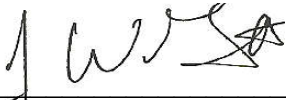
9. In accordance with 28 U.S.C. §1446(d), written notice of the filing of this notice of

removal will be promptly served upon all adverse parties, and a copy of this notice of removal promptly will be filed with the Clerk of the District Court of Harris County, Texas.

Defendant Great American Alliance Insurance Company respectfully requests that this action be removed to this Court and that this Court accept jurisdiction of this action and place this action on the docket of this Court for further proceedings as though the action originally had been instituted in this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This pleading was served in compliance with Rule 5 Federal Rules of Civil Procedure on December 2, 2019, via facsimile, first class regular mail, certified mail, return receipt requested and/or electronically.

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/s/ J. Chad Gauntt

J. Chad Gauntt